REMARKS

Claims 1-20 and 22-25 are currently pending in this application. Claims 1, 9, 23, 24 and 25 have been amended. Applicant has carefully reviewed the Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Oath/Declaration

The Examiner rejected the inventor declaration for failing to comply with 37 CFR 1.63. The Examiner alleges the inventor declaration is defective because the declaration states that the inventor acknowledges a duty to disclose information which is material "to the examination of the application" rather than information material "to patentability" as defined in Section 1.56. Applicants respectfully disagree with the Examiner's rejection of the inventor declaration.

Applicants submit that 37 CFR section 1.63 (see Exhibit A) previously required an acknowledgement of Applicant's duty to disclose information that is "material to the examination of the application". However, in a "Duty of Disclosure" rule change published at 1135 OG 13 (February 4, 1992), Rule 63 was changed so that its language tracked the "material to patentability" language of Rule 56 (See Exhibit B).

In making this change, and in reply to Comment 38 at 1135 OG 17 (see Exhibit C), the Office stated that the averments in oath or declaration forms presently in use that comply with the previous section 1.63 or 1.175 will also comply with the requirement of the new rules. The Office also stated, "Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules." Applicants therefore submit that the as-filed inventor declaration which complies with the requirements of Rule 63 prior to the 1992 rule change also complies with the requirements of the current rule and should be accepted.

Moreover, the first page of the Duty of Disclosure Rulemaking (see Exhibit B) as published at 1135 OG 13 (February 4, 1992) explains that an Applicant for a patent also has a duty of candor and good faith in dealing with the Patent Office and that this duty is

broader than the duty to disclose information material to patentability. Therefore, Applicants submit that the duty to disclose information material to the "examination" of the application (which includes the duty of candor and good faith) as recited in the inventor declaration for the subject application is broader than and includes the duty to disclose information material to the patentability of the application as required by the Examiner.

Applicants therefore submit that the as filed inventor declaration encompasses a broader duty of disclosure and complies with the requirements of 37 CFR 1.63. Applicants therefore request acceptance of the inventor declaration as filed and withdrawal of this objection.

Double Patenting

Claims 1-20 and 22-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending application serial no. 10/782,684. Applicant prefers to hold this matter in abeyance pending notification of allowable subject matter in the present application.

Claim Rejections Under 35 U.S.C. §103

Claims 1-20 and 22-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,522,850 (Yomtov) in view of U.S. Patent No. 5,908,392 (Wilson) and Legal Precedent.

Yomtov discloses a memory portion 82 wherein eight seconds of data are periodically stored. The last three seconds of this data are transferred from the memory portion 82 to a scratch pad memory 84 if atrial fibrillation is detected. See column 8, lines 13-16 and 27-32. The Office Action states that the scratch pad memory 84 corresponds to Applicant's temporary memory and that atrial fibrillation itself is indicative of an impending cardiac arrhythmia, *i.e.*, continued atrial fibrillation.

Claim 1 recites, in part, the evaluation of cardiac rhythm for the detection of predetermined recording triggers indicative of an impending cardiac arrhythmia, wherein

the cardiac arrhythmia indicated as impending, is not currently present; and the control of the recording of diagnostic data such that no data is recorded in the temporary memory until the detection of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present. Claims 23, 24 and 25 recite similar subject matter.

As stated above, Yomtov teaches the recording of data in a temporary memory, *i.e.*, the scratch pad memory, only upon detection of a cardiac arrhythmia. Yomtov does not detect impending atrial fibrillation, which as recited in Applicant's claims, corresponds to a time when atrial fibrillation is not currently present. Because of this, Yomtov cannot be construed to disclose evaluation of cardiac rhythm for the detection of predetermined recording triggers indicative of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present, and control of diagnostic data recording such that no data is recorded in the temporary memory until the detection of an impending cardiac arrhythmia, as recited in claims 1, 23, 24 and 25. Yomtov instead, simply teaches the recording of data upon the detection of occurring atrial fibrillation.

Wilson discloses a system that continuously records data into temporary buffers without reference to any type of criteria. See column 8, lines 49-54. Upon meeting a particular criteria, data from the temporary buffers is transferred to a snap-shot buffer for long-term storage. See column 10, lines 16-25 and lines 41-44. Thus the Wilson system continuously records data.

In view of the foregoing, Applicant submits that neither Yomtov nor Wilson, either alone or in combination, teach or suggest the combinations of elements and features recited in independent claims 1, 23, 24 and 25. Accordingly, Applicant requests reconsideration of the §103 rejections of claims 1, 23, 24 and 25. Applicant further submits that, by virtue of the incorporation of subject matter recited in their respective independent base claim, each of dependent claims 2-20 and 22 is also patentable over Yomtov and Wilson.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-20 and 22-25 is believed to be in order.

Respectfully submitted,

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Date

David S. Sarisky
Attorney for Applicant
Reg. No. 41,288
818-493-3369

CUSTOMER NUMBER: 36802